



Philadelphia's New Medical Malpractice Case Management Program: Everything you need to know from the Judges and leading practitioners

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Overview of today's webinar

▪ Speakers

- Daniel J. Anders, Supervising Judge, Civil Division
- Susan I. Schulman, Judicial Leader, Medical Malpractice Program
- Kathleen M. Kramer, Marshall Dennehey
- Timothy R. Lawn, Raynes & Lawn
- Regan S. Safier, Kline & Specter
- Daniel H. Tran, Marshall Dennehey
- James P. Kilcoyne, Kilcoyne & Nesbitt
- Mary Kay Schwemmer, Assistant Vice President and Chief Counsel, Children's Hospital of Philadelphia
- Beth C. Persun, Director of Claims Administration, Mcare

▪ Two main topics

- Judges Anders and Schulman will provide an overview of changes to the medical malpractice program as well as an update on expected pretrial conferences and trial dates for medical malpractice cases.
- Leading medical malpractice attorneys will discuss the Court's newly created medical malpractice mediation program and offer first-hand experience on how to successfully resolve cases earlier as well as to prepare for pretrial conferences and trial.

Overview of All Civil Jury Trials

- **25-30 trial date certainties & 150-180 pools scheduled each month**
 - Every case has settled or been called to trial during trial month
 - Limited number of COVID related continuance requests
- **14 jury panels selected each week**
 - Jury selection generally occurs on Thursday and Friday with one jury selected on Monday, Tuesday and Wednesday
- **Jurors are the most limited resource during the pandemic**
 - 10 to 15 cases settle each month at or during jury selection
 - Jury panels for cases that settle at or during jury selection cannot be repurposed for another case that is awaiting trial.
 - Help your colleagues by settling cases that can be settled without picking a jury.
 - Use juries only for cases that must go to verdict.
 - Do not use jury selection to settle a case.

The Court has the responsibility to timely dispose all civil cases

- For the last 30 years, Philadelphia's civil case management program has been nationally recognized by the National Center for State Courts for timely resolution of all civil cases
 - Prior to the pandemic, the Court met the ABA's standard of disposing of 95% of civil cases within 2 years of filing
- In March 2020, the pandemic disrupted all aspects of civil litigation
 - Jury trials in Philadelphia were paused as of March 2020.
 - In March 2021, the Civil Division resumed jury trials. Since March 2021, there have been more than 300 jury verdicts in civil cases.
- **As of today, all civil cases in the 2020, 2021 and 2022 major jury programs are current other than medical malpractice cases**
 - In other words, there is no COVID "backlog" in the Civil Division other than medical malpractice cases.
 - "Current" means pretrial conferences are held in the month they are projected.
 - Pool cases are scheduled for trial in the month immediately following the pretrial conference.
 - Trial date certain cases are generally scheduled between 2 to 4 months after the pretrial conference.

Medical Malpractice Inventory

- **There are over 800 active medical malpractice cases currently pending in Philadelphia:**
 - 129 medical malpractice cases scheduled for trial in 2023 or 2024
 - 153 medical malpractice cases will have **actual** pretrial conferences in January, February and March 2023
 - 330 medical malpractice cases have **projected** pretrial conferences from March 2023 to December 2023
 - 240 new medical malpractice cases filed in 2022
- As of March 2023, Judge Schulman will have scheduled trials on all medical malpractice cases with projected pretrial conferences through to and including February 2023.
- Thus, we will be essentially “current” in holding pretrial conferences in medical malpractice cases as of March 1, 2023.

Trials dates in 2025, 2026 and 2027?

- After the March 2023 pretrial conferences are held, the 2023 and 2024 trial calendars will be nearly fully scheduled for medical malpractice cases.
- More importantly, there are nearly three years' worth of medical malpractice cases with 330 projected pretrial conferences from March to December 2023.
- If the status quo remains, we will – by the end of 2023 – fill up the trial calendars for 2025, 2026 and 2027.
 - Cases filed in 2022 could get trial dates in 2028 or 2029
 - Expected increase in new filings in 2023 due to change to venue rule
- The time is now to change the culture of when and how medical malpractice cases settle.
 - More than 95% of medical malpractice cases settle without going to verdict.
 - We need these cases to settle earlier so that we can conduct timely trials of cases that must go to a verdict.

Court/Bar resources to resolve cases earlier

- **The Court and medical malpractice bar have partnered to invest a tremendous amount of resources to assist the parties to resolve cases earlier**
- **Partnership between the Court and medical malpractice bar**

Judge Anders formed a medical malpractice working group in December 2021 and has been holding monthly meetings with plaintiff and defense attorneys from the medical malpractice bar to create this program.
- **New Medical Malpractice Judicial Leader**

Judge Schulman will conduct all 1-year status conferences and pre-trial conferences, and will facilitate settlement conference requests.
Note: Major jury team leaders dispose of motions & conduct discovery court.
- **New Case Management mechanisms**

New 1-year status conference to ensure cases are moving along and to identify cases for early mediation.
New 60-day case status prior to trial to facilitate requests for a JPT settlement conference.

Court/Bar resources to resolve cases earlier

Specialized medical malpractice settlement/mediation JPT program

- Unprecedented access to highly experienced medical malpractice attorneys – vetted by both sides of the medmal bar – who have volunteered as JPTs to assist the Court to resolve cases including:
 - Bill Banton, Howard Klein, Kathleen Kramer, Bobbi Pichini, Dan Ryan, Rob Sachs, Howard Scher, Dan Sherry, Mitchell Shore, Bernie Smalley, Steve Wigrizer
 - Senior Judges Marlene Lachman, Rosalyn Robinson and Gary Glazer remain available for settlement conferences
 - Peter Hoffman and Madeline Sherry conduct status conferences and triage cases for the Court
- JPTs will conduct Court-facilitated, 3-hour mediation conferences
 - No JPT conference will be scheduled unless counsel has authority of all parties to participate in good faith: a reasonable demand/offer has been extended; necessary consents and tenders have been made.
 - JPT or Senior Judge is not selected by the parties.

Successful pilot program for early resolution

Starting in June 2022, 5 major academic health centers in Philadelphia participated in a pilot program to resolve cases earlier through Court-facilitated settlement conferences with med-mal JPTs and/or senior judges.

The academic health centers recently reaffirmed their commitment:

Unless identified by the defense as a “must try” case, the academic medical centers remain committed to participating in good faith in the Court’s medical malpractice JPT program in an effort to resolve cases at an earlier point before trial. The success of the program requires a matching commitment from the plaintiff’s bar to fairly evaluate cases for settlement at an earlier point and participate in good faith in earlier resolution of cases.

Nearly 20 medical malpractice cases were submitted as part of the pilot program for early resolution of medical malpractice cases.

- **All of the cases submitted through this pilot program settled with the assistance of medical malpractice JPT’s**
- **None of these cases had trial dates**

Effect of settling cases earlier: timely trials of cases that have to go to verdict

If cases scheduled for trial in 2023 and 2024 **settle** as a result of early mediation conferences, **the Court will replace those cases** with additional medical malpractice cases for trial in 2023 or 2024

- But, the cases must settle early: medical malpractice cases that settle less than 6 months prior to trial will not be replaced with another medical malpractice case in that trial slot

If cases scheduled for trial in 2023 and 2024 **do not settle** as a result of early settlement conferences, **the Court will take an extended break** from scheduling pretrial conferences for medical malpractice cases.

- The break will be similar in length to the 6-month break that occurred from April 2022 to October 2022 when no pretrial conferences were held on medical malpractice cases.

Overview of judicial case management

- Initial case management conference
 - Conducted “on the papers” by civil case managers
 - 90 days after case initiated
 - Case management order for complex track issued
 - Rule to show cause if no complaint filed, no service of complaint or no certificate of merit
- 1 year status conference
 - Conducted by Judge Susan Schulman
 - 12 months after case initiated
 - Status of discovery, experts, dispositive motions, settlement, Mcare issues
- Pretrial conference
 - Conducted by Judge Susan Schulman
 - 23 months after case initiated unless extended by order granting motion for extraordinary relief
- Settlement conference
 - Conducted by medical malpractice JPT or senior judge
- 60 day status before trial
 - Conducted by Peter Divon
 - Inquiry of interest in a Court supervised mediation conference

1 year status conference

1 Year Status Conference

- Judge Schulman presides
- Held via Zoom
- Lead trial attorney should attend
- Held 12 months after case initiation
- Be prepared to review status of:
 - written discovery requests; depositions; dispositive motions; special issues; status of expert reports.
 - Authority by principals to participate in future settlement with medmal JPT (which can be scheduled out 3-4 months)
 - MCare issues – Has case been reported to Mcare? Is there consent/tender? If not, why not?

1 year case status form

- Parties submit 15 days prior to the conference
- Not as extensive as pretrial memorandum but more extensive than 90-day case management memorandum
- Requires a demand by plaintiff

How to prepare for pretrial conference

- **Schedule trial date.**
- Counsel are **required** meet and confer with each other prior to pretrial conference to:
 - Agree upon number of days of trial. Be prepared to give realistic number of fact and expert witnesses expected to testify.
 - Agree upon three earliest dates for trial (ideally in 2023)
 - Stipulate to dismiss unnecessary parties
- **Discovery/Expert Reports** – all discovery and expert reports must be exchanged prior to the pretrial **regardless of mutually agreed upon extensions.**
- **JPT Settlement Conference**
- Counsel are **required** meet and confer with **clients** prior to pretrial to:
 - Determine whether client has earnest interest in participating in early JPT settlement conference. The Court expects that cases in suit for more than 2 years have been conferenced by the necessary committees.
 - A JPT conference will be scheduled **only** where **plaintiff submits a reasonable demand and defense submits reasonable offer *prior* to the JPT Conference.**
 - There must be consent.
 - Tender to Mcare must be made where appropriate
 - Specialized med-mal JPTs and/or Senior Judges Lachman, Robinson and Glazer will conduct 3-hour settlement conferences that can be scheduled within 90 days

Outcomes from pretrial conferences

- 79 pretrials on medical malpractice cases held in November and December 2022 by Judge Schulman
 - Settlement statistics
 - 15% of cases settled prior to the pretrial conference
 - 35% of cases requested early settlement conferences with medmal JPT's within next 90 days
 - Ideally, all but “must try” cases should agree to early settlement conferences
 - Scheduling for trial
 - 20% of cases scheduled for trial between January & June 2023
 - 60% of cases scheduled for trial between July & December 2023
 - 20% of cases scheduled for trial in early 2024
 - Length of trials
 - 50% of cases were 5 day trials

Note: The unavailability of defense counsel due to other court attachments is the driving factor in the inability to schedule earlier trial dates.

Expanding the bench of defense counsel to try cases is necessary to enable the Court to meet its obligation to timely dispose of cases.

Changing the culture so that medical malpractice cases resolve earlier

Keys to resolving cases early

- Agree to exchange of expert reports earlier than case management deadline, or identify experts and informally discuss opinions (with agreement that nothing discussed can be used as evidence or at trial).
- Tender of policy to Mcare.
- Consent of medical professional to settle.
- Keep discovery on track – agree to eliminate unnecessary and voluminous discovery requests.
- Provide all information required to enable early evaluation by insurer/provider and their conference committees. Committee review is a detailed and complex process; reduce delay by completing discovery early and providing complete information.
- Transparency of insurer/administrative committee process; disclose timeframe for internal conferencing by risk management/medical review committees.
- Defense counsel provides insurer/provider's committee with comprehensive memorandum on claims, defenses, damages and risk assessment.
- Be cognizant that insurer/provider risk management/medical review committees meet on a regular basis (usually monthly) and have a set number of cases to review. They cannot conduct ad hoc case reviews.

Changing the culture so that medical malpractice cases resolve earlier

Post-COVID realities: Increased inventory of older cases are ready for settlement **now only if:**

- **Reasonable** demands are made.
 - Plaintiffs understand consequence of \$20 million demand on \$750,000 case. (Delay of meaningful insurer/provider evaluation of case).
 - Plaintiffs understand impact of having no demand.
- **Reasonable** and early offers are made.
 - Defendants understand consequence of \$50,000 offer on \$5 million case. (Plaintiff continues litigation; costs rise).
 - Defense is cognizant that as inventory increases and interest rates rise, potential for large delay damages awards increases.
- All parties are prepared to take advantage of experienced medical malpractice JPTs for early settlement discussions.
- Parties advise the Court of any dispositive motions or motions in limine (where Court decision could lead to settlement for any or all parties)

More than 95% of all medical malpractice cases settle.
The proximity of a trial date does not change the settlement value of a case.

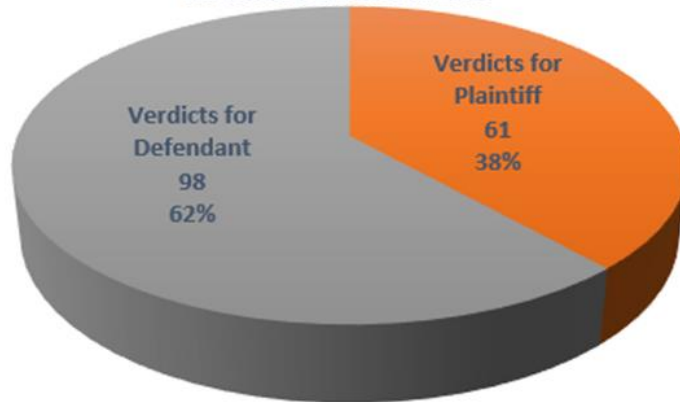
Medical malpractice verdicts

Medical Malpractice Jury Verdicts Report

2013-2022* Medical Malpractice Jury Verdicts

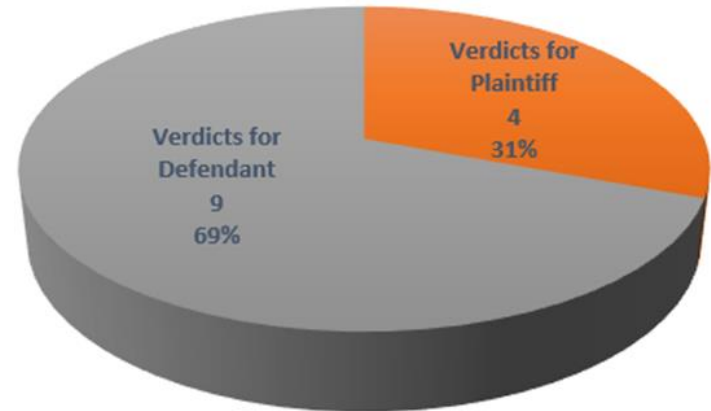
Total Number of Verdicts: 159
Total Amount Awarded: \$229,189,745.55

*No verdicts entered in 2020



2022 Medical Malpractice Jury Verdicts

Total Number of Verdicts: 13
Total Amount Awarded: \$22,467,958.70



- From 2017 to 2019, an average of 408 medical malpractice cases were filed each year.
- From 2013 to 2022, an average of 18 medical malpractice verdicts were rendered each year, which is less than 5% of the total number of cases filed each year.
- On average, 62% of the medical malpractice verdicts are defense verdicts.

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